

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CACR 06-590

DECEMBER 20, 2006

JAMES PATTILLO

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2005-88, CR2004-4629]

V.

HONORABLE MARION ANDREW
HUMPHREY, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant James Pattillo was convicted in a bench trial of second-degree battery. The trial court sentenced him as a habitual offender to ten years in prison, with three years suspended. On appeal, Mr. Pattillo raises two arguments. First, he argues that there was insufficient evidence to support the verdict. Next, he contends that the trial court erred in admitting the identification testimony of State's witness Michael Anthony. We affirm.

The victim in this case was Norman Gill. He testified that he was inside the Sandpiper night club at about 3:00 a.m. on August 7, 2004, when he was involved in an altercation. As a result of the altercation, Mr. Gill and another man were removed from the bar. Mr. Gill stated that, while he was in the parking lot, six or eight men attacked him. He described the first two men as a guy with a red hat, red shirt, and gold teeth, and a guy with

braids and white beads in his hair. Mr. Gill stated that there were punches thrown by the first two men, and “the next thing I knew, I was out.” Mr. Gill woke up the next morning in the hospital with two fractures to his face and injuries to his hip and leg.

Mr. Gill identified Mr. Pattillo as one of the two men who first attacked him. On cross-examination, Mr. Gill acknowledged that five days after the crime he was unable to select Mr. Pattillo out of a photo lineup. He further acknowledged that in his statement to the police he only described one man wearing a red shirt and having gold teeth.

Officer Kenny McMahan of the Little Rock Police Department testified next. He stated that he was called to the scene of the crime and arrived there first. He found Mr. Gill lying on the ground with several men around him. Officer McMahan testified that he made contact with Michael Anthony, who was a witness to the attack. Mr. Anthony gave a description of one of the culprits, which Officer McMahan relayed to backup Officer Dennis Hutchins. Officer Hutchins returned to the scene soon thereafter with Mr. Pattillo, who matched the description given by Mr. Anthony. At that time, Mr. Anthony positively identified Mr. Pattillo.

Officer Hutchins testified that the description he received was a black male with braids, and blue and white beads in his hair, who was last seen walking southbound. Officer Hutchins stopped Mr. Pattillo in his car attempting to leave from a parking lot south of the night club. Officer Hutchins stated that when Mr. Pattillo was taken into custody he was cooperative.

Mr. Anthony testified that on the night at issue he saw six or seven men throwing bricks at Mr. Gill and kicking him while he was down. Mr. Anthony stated that he saw Mr. Pattillo hit Mr. Gill in the head with a brick, and that Mr. Pattillo was repeatedly kicking Mr. Gill while acting like a “cheerleader” and encouraging the others to join in the assault. Mr. Anthony indicated that the attack lasted about five minutes.

Mr. Pattillo testified on his own behalf, and he acknowledged that he was at the Sandpiper that morning and that he witnessed the attack on Mr. Gill. However, he denied being a participant. He stated that the assailants fled the scene immediately, whereas he did not leave until the ambulance arrived and Mr. Gill was being helped.

Mr. Pattillo’s first argument on appeal is that there was insufficient evidence to support his conviction for second-degree battery, which is committed if, with the purpose of causing physical injury to another person, a person causes serious physical injury to any person. *See* Ark. Code Ann. § 5-13-202(a)(1) (Repl. 2006). We have repeatedly held that, in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

Mr. Pattillo specifically challenges the State's proof of his identity as one of the victim's assailants. He asserts that the only proof of his identity was in the testimony of Mr. Gill and Mr. Anthony, and submits that this was insufficient. Mr. Pattillo notes that Mr. Gill did not give a description of him to the police and could not identify him from a photo lineup. He further asserts that the identification by Mr. Anthony was unreliable given the suggestive procedure used by the police where he was taken into custody and returned to the crime scene. Mr. Pattillo contends that the evidence pointed toward his innocence where he was in no hurry to leave the scene after the attack, cooperated with the police, and was not found to have blood on him or other signs evidencing an altercation.

We hold that there was substantial evidence to support the trial court's finding that Mr. Pattillo committed the battery. In *Haynes v. State*, 314 Ark. 354, 862 S.W.2d 275 (1993), our supreme court held that unequivocal testimony identifying the accused as the culprit is sufficient to sustain a conviction, and that it is for the factfinder to decide the credibility of identification testimony. Both Mr. Gill and Mr. Anthony unequivocally identified Mr. Pattillo as one of the participants in the attack, and contrary to Mr. Pattillo's argument, this was sufficient to prove that he committed the offense.

Mr. Pattillo's remaining argument is that the trial court erred in denying his motion to suppress Mr. Anthony's in-court identification of him because the identification procedure used by the police was unnecessarily suggestive, and the in-court identification was unreliable. He cites *Mills v. State*, 322 Ark. 647, 910 S.W.2d 682 (1995), where the

supreme court stated that in determining whether an in-court identification is admissible, the court looks first at whether the pretrial identification procedure was unnecessarily suggestive or otherwise constitutionally suspect. Reliability is the linchpin of determining admissibility of the identification testimony. *Mezquita v. State*, 354 Ark. 433, 125 S.W.3d 161 (2003). Mr. Pattillo asserts that because he was the only suspect brought back by the police to the night club to be identified by Mr. Anthony, it was overly suggestive and all but inevitable that he would be identified as the culprit. Mr. Pattillo further contends that the in-court identification by Mr. Anthony was unreliable given the number of men involved in the attack, the relatively short duration of the attack, and the fact that Mr. Anthony could only describe one of the assailants to the police.

While the identification procedure used by the police in this case was suggestive, that does not end our inquiry. Even if the identification technique used is suggestive, an in-court identification is admissible if the identification in question is reliable. *Bishop v. State*, 310 Ark. 479, 839 S.W.2d 6 (1992). The following factors are used in determining reliability.

(1) the prior opportunity of the witness to observe the alleged act; (2) the accuracy of the prior description of the accused; (3) any identification of another person prior to the pretrial identification procedure; (4) the level of certainty demonstrated at the confrontation; (5) the failure of the witness to identify the defendant on a prior occasion; and (6) the lapse of time between the alleged act and the pretrial identification procedure.

Mills v. State, supra. We will not reverse a ruling on admissibility of an identification unless it is clearly erroneous, and this court will not inject itself into the process of determining

reliability unless there is a very substantial likelihood of misidentification. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000).

In the case at bar there were sufficient factors establishing the reliability of the identification by Mr. Anthony. Contrary to appellant's argument, we think a period of five minutes gave the witness an ample opportunity to observe the events. This is particularly evident given Mr. Anthony's detailed testimony about Mr. Pattillo's participation and encouragement of others during the attack. When the police arrived, Mr. Anthony accurately described Mr. Pattillo as having braids with blue and white beads. There was no evidence that Mr. Anthony ever identified anyone else as the culprit who was encouraging the other attackers, nor did he fail to identify Mr. Pattillo on any prior occasion. Finally, there was a short lapse of time between the attack and the identification procedure. Under these circumstances, we hold that the trial court did not clearly err in admitting the in-court identification of appellant by Mr. Anthony.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.